Letter of Comment No: File Reference: FSPFAS13-A

Date Received:

September 12, 2005

Mr. Lawrence W. Smith Director, Technical Application & Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Re: File Reference-FAS 13a - Accounting for a Change of Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction - Comments of Proposed FSP

Dear Mr. Smith,

Public Service Enterprise Group, Inc. (PSEG) is writing to comment on the above referenced Proposed FSP. PSEG is a publicly traded (NYSE:PEG), growing energy and energy services company headquartered in New Jersey, with total assets of \$29.2 billion and 10,500 employees serving over 2 million utility customers. We wish to provide comments relative to our most significant concerns with this FSP which include:

- 1. The use of a threshold test for recording tax benefits in a leasing transaction,
- 2. If a threshold is required, the adoption of "probable" as the standard threshold for the recognition of the benefits of a tax position in leveraged lease computations, and
- The proposed effective date of the FSP.

It is these three points that would seem to create the most significant financial statement distortions and implementation issues. We will address each of these points below.

1. The use of a threshold test for recording tax benefits in a leasing transaction.

Paragraph 12 of FAS 13a links the tax computations for leveraged leases to the Proposed Interpretation addressing "Accounting for Uncertain Tax Positions". Specifically it seems to imply that the same "probable" standard for recognition contained in paragraphs 6 through 9 of that Interpretation would likewise apply to the tax estimates included in leverage lease transactions. Applying this same standard in a leveraged leasing context is inappropriate and will result in material distortions in the recording of lease income and the presentations of lease investments on the balance sheet. Paragraph 44 of FAS 13, Accounting for Leases, clearly contemplates that the cash flows included in the lease computations are projections. Projections are management's best estimate of those cash By interposing a probable threshold relative to a leasing tax position, the flows. statement would make it impossible for management's best projections of cash flows to be included in the leasing computations.

This can best be illustrated by a hypothetical example. Assume a taxpayer has a LILO transaction and has determined they cannot meet the probable standard relative to the tax benefits generated by the LILO. If the taxpayer does not prevail with the IRS, the claimed tax benefits would be shifted to the end of the lease life, so the issue merely represents one of timing of recognition. Further assume that it is known in the industry that the IRS is settling similar LILO issues for a 50% taxpayer concession. That is, the taxpayer would defer 50% of the claimed tax benefits until the final year of the lease. In this case, FAS 13a would seem to suggest that no tax benefits may be recognized in the lease computations at all, until an actual settlement is finalized with the IRS, because it is not probable that the taxpayer will prevail on the issue. This result would seem to run contrary to the idea of a best estimate projection embodied in FAS 13, since it would seem very probable that the taxpayer could settle the case for 50 cents on the dollar. Further, the distortion of recognizing no tax benefits at all, versus 50 percent of the tax benefits, may very likely cause a lease to fail the FAS 13 tests for leveraged lease accounting. So in this example, the taxpayer would reclassify the lease as a direct finance lease upon the adoption of FAS 13a, resulting in large amounts of debt being recorded on the balance sheet and then reclassify it back to a leveraged lease several years later when a settlement is reached with the IRS. The end result would be significant financial statement changes that will confuse investors and analysts.

The very nature of lease accounting is based upon estimates of future cash flows. We believe it is inappropriate to interject a "probable" recognition threshold for tax projections into lease computations as it violates this very premise of lease accounting and has the potential to create material distortions in financial statements. For purposes of FAS 13 we recommend that taxes should always be included in lease computations at managements best estimate, without any recognition threshold similar to other long term cash flow projections embodied in the lease contract.

2. If a threshold is required, the adoption of "probable" as the standard threshold for the recognition of the benefits of a tax position in leveraged lease computations.

As indicated in point 1, we do not believe it is appropriate to apply a recognition threshold when estimated tax cash flows for use in a leveraged lease computation. However, if FASB strongly believes that threshold is necessary, we believe that the "probable" standard is not the appropriate threshold.

The FSP adopts the "probable" standard (generally believed to be approximately a 75% confidence level) as the threshold that must be met before any tax benefit can be reflected in the financial statements. This threshold is excessively high when considering the nature and uncertainty of corporate income tax matters. Given the extensive areas of complexity in the tax code, this threshold will cause significant amounts of tax benefits to be omitted from the financial statements in the year claimed on the tax return. Under the

proposed standard, recognition will only take place for these items when they are settled with the taxing authority or the statute of limitations expires. A significant amount of counter-intuitive volatility will result in financial statement tax expense. In fact, the standard will create significant distortions in the recognition of tax expense that are not immediately transparent to those relying on such statements. This distortion may lead to incorrect or misleading conclusions on the value of tax positions flowing through an entity's financial statements. Further, FASB should consider the impact of this statement on its current initiative to converge US GAAP with GAAP set out by the International Accounting Standards Board.

A reasonable threshold to adopt would be a "more likely than not standard" This threshold has much appeal because:

- 1. It is generally the standard that most large corporations utilize in determining whether or not to claim a particular tax benefit in its tax return and is an accepted, traditional level of tax opinions provided by tax attorneys. Therefore, use of this standard would yield a level of consistency between tax reporting and financial statement reporting.
- 2. It is the standard of confidence that will avoid most penalties imposed by the Internal Revenue Code and by most state taxing jurisdictions.
- 3. At this threshold, the taxpayer still believes he will ultimately prevail, which meets the more traditional, dictionary definition of probable.
- The use of a "more likely than not" standard will greatly simplify compliance requirements, reducing cost and hours to comply.

For the reasons cited above, we recommend that, if the FASB adopts a recognition threshold for purposes of projecting tax expense under FAS 13, then a "more likely than not" threshold for recognition of a tax benefit is a more appropriate standard than "probable".

3. The proposed effective date of the FSP.

Given the amount of work and effort required to evaluate all tax positions and perform the computations necessary to re-price all leveraged lease transactions, it is unreasonable to expect taxpayers to be able to comply with this standard in their financial statements issued after 12/15/2005, especially considering FASB's announcement of a roundtable meeting to discuss the Interpretation of FASB 109 on October 10th, which means that a final standard would not be issued before that date. This would leave companies only 2 to 3 months to prepare a complete and accurate review. Further, SEC registrants must create, document, test, implement, and have audited, an internal control process over this standard to comply with the requirements of the Sarbanes Oxley legislation. This is not

reasonably achievable. We recommend making the statement effective for financial statement years ending after 12/15/06. This will allow sufficient time to develop processes and controls necessary to implement this complex standard.

We appreciate this opportunity to comment on this proposed FSP.

Sincerely,

Patricia A. Rado

Vice President and Controller